

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

|                    |   |                           |
|--------------------|---|---------------------------|
| NANCY KINDER,      | ) |                           |
| Plaintiff,         | ) |                           |
|                    | ) | No. 1:10-cv-405           |
| -v-                | ) |                           |
|                    | ) | HONORABLE PAUL L. MALONEY |
| NORTHWESTERN BANK, | ) |                           |
| Defendant.         | ) |                           |
| _____              | ) |                           |

**ORDER DENYING MOTION FOR RECONSIDERATION**

On July 13, 2012, this Court issued an order adopting a report and recommendation issued by the magistrate judge regarding attorneys' fees. Plaintiff's counsel now asks this Court to reconsider that Order. This Court adopted the report and recommendation over objections, concluding that the factual basis for the objections were not presented to the magistrate judge. Plaintiff's counsel disagrees that he was afforded an opportunity to present the facts to the magistrate judge outlined in the objection, noting that the magistrate judge acknowledged that the fee application was not subject to the normal adversarial process because the defendant had no incentive to challenge counsel's fee application.

The clear rule in the Sixth Circuit Court of Appeals is that absent compelling reasons, the Magistrate Judge Act permits *de novo* review of the magistrate judge's decision only as to those arguments or issues presented to the magistrate. *Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000); *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998). The same rule has been applied in other circuit courts. *See, e.g., Paterson-Leitch Co., Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988); *Roberts v. Apfel*, 222 F.3d 466, 470 (8th Cir. 2000); *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996). The fact that Defendant did not oppose the fee award requested places a greater, not a lesser, burden on Plaintiff's counsel to marshal all

the evidence and justifications for the award to the magistrate judge. *See Borden v. Sec’y of HHS*, 836 F.2d 4, 6 (1st Cir. 1987) (“Parties must take before the magistrate, not only their best shot, but all of their shots.”) (per curiam) (citation and internal quotation marks omitted).

Assuming discretion to consider the factual basis for the objection, compelling reasons have not been established for considering the additional evidence and arguments not presented magistrate judge. When the matter was referred to the magistrate judge, this Court expressed concern with the size of the attorney fee award. (ECF No. 44 Opinion and Order Granting in Part and Referring in Part Joint Motion for Preliminary Approval of Class-Action Settlement 15-16 PgID 537-58.) In that order, this Court compared the size of the award requested in this case to the award of attorney fees in similar suits. Plaintiff’s counsel filed a brief in support of the fee award, addressing many issues. (ECF No. 47.) The brief, however, did not address the concerns outlined in the report and recommendation. To allow a party to present only a portion of their evidence to the magistrate judge, and then present other evidence to the district judge, defeats the purpose of the referral.

Plaintiff’s counsel has not established that the Order adopting the report and recommendation was either clearly erroneous or contrary to law. Therefore, the motion for reconsideration is **DENIED. IT IS SO ORDERED.**

Date: August 7, 2012

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge